

CCB-19-CV-2515

AO 243 (Rev. 09/17)

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court For The District OF Maryland	
Name (under which you were convicted): <u>Donta Betts</u>	Docket or Case No.: <u>JFM-15-0557-1</u>
Place of Confinement: <u>AUSP-THOMSON, ILLINOIS - High</u>	Prisoner No.: <u>59165-037</u>
UNITED STATES OF AMERICA	
Movant (include name under which convicted) V. <u>Donta Betts</u>	

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging AUG 30 2019

AT BALTIMORE
CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND

DEPUTY

U.S. District Court For The District OF Maryland(b) Criminal docket or case number (if you know): JFM-15-0557-001

2. (a) Date of the judgment of conviction (if you know): JUNE 24, 2016

(b) Date of sentencing: JUNE 24, 2016

3. Length of sentence: 180 MONTHS of imprisonment, 5 Years S. Release.

4. Nature of crime (all counts): 26 USC 5861(F) and 18 USC 2 - Count ONE
18 USC 924(C)(1)(A)(iii) - Count Two

Count ONE - Making a Destructive Device; Aiding and Abetting;Count Two - Discharge of a Firearm in Furtherance of a Drug Trafficking Crime.

5. (a) What was your plea? (Check one)

(1) Not guilty ☐(2) Guilty ☒(3) Nolo contendere (no contest) ☐

6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

N/A

6. If you went to trial, what kind of trial did you have? (Check one) N/A Jury ☐ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? N/A Yes ☐ No ☐

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8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

- (a) Name of court: U.S. Court of Appeals For The Fourth Circuit
- (b) Docket or case number (if you know): 18-6060
- (c) Result: Dismissed in part, Affirmed in part.
- (d) Date of result (if you know): August 31, 2018
- (e) Citation to the case (if you know): _____
- (f) Grounds raised: (1) Validity of Guilty Plea ; (2) That trial Counsel rendered ineffective assistance by failing to advise the district court at the guilty plea hearing that Movant had an intellectual disability and by failing to have him evaluated for competency to plead guilty and be sentenced.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): N/A
- (2) Result: N/A
- (3) Date of result (if you know): _____
- (4) Citation to the case (if you know): N/A
- (5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: U.S. District Court For The District of Maryland
- (2) Docket or case number (if you know): 1:17-CV-01748-CCB
- (3) Date of filing (if you know): _____

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- (4) Nature of the proceeding: Motion 28 USC 2255
- (5) Grounds raised: (A) That Counsel was ineffective for not pursuing a Direct Appeal upon request of Petitioner; (B) Movant requested a reduction of His sentence based on the Supreme Court Case Dean v. U.S., No. 15-9062; (C) Whether Counsel was ineffective for not Challenging Movant's Juvenile Enhancement; (D) Whether Counsel was ineffective for not Challenging Movant's Sentence.
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- (6) Did you receive a hearing where evidence was given on your motion, petition, or application?
Yes ☐ No ☒
- (7) Result: Granted as to the right to file a direct appeal. (other claims denied without prejudice.)
- (8) Date of result (if you know): January 12, 2018. See Exhibit "A" attached.
- (b) If you filed any second motion, petition, or application, give the same information:
- (1) Name of court: N/A
- (2) Docket of case number (if you know): N/A
- (3) Date of filing (if you know): N/A
- (4) Nature of the proceeding: N/A
- (5) Grounds raised: N/A

- (6) Did you receive a hearing where evidence was given on your motion, petition, or application?
Yes ☐ No ☐ N/A
- (7) Result: N/A
- (8) Date of result (if you know): N/A
- (c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application? N/A
- (1) First petition: N/A Yes ☐ No ☐
- (2) Second petition: N/A Yes ☐ No ☐
- (d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:
N/A

Motion was Granted as to the right to file a direct appeal.

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12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Actual Innocence of 18 USC 924(c)(1)(A)(iii);
There was no Factual Basis on the 924(c) Crime.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The facts and the government's evidence clearly shows that movant is factually innocent of the crime 924(c) because there was no nexus between the drug trafficking crime and the firearm as required by law. Movant sold drugs to a female in one day with no firearm involve and on a different day (July 2, 2015) He discharged the firearm on her in retaliation for failing to pay him, completely, the drugs he sold her days before. Movant did not use nor discharged a firearm during or in furtherance of the alleged drug trafficking crime and therefore he is factually innocent of the 924(c) crime. There was no Factual Basis on the 924(c) crime.

The 924(c) conviction should be vacate and the charge dismiss, based on the above-stated.

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why:

Movant's Counsel Failed To Raise This Issue on His Direct Appeal.

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒ N/A

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(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐

N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐

N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND TWO: Invalid Waiver of Movant's Indictment; The Court Lacked Jurisdiction To Sentence Movant Without A Valid Waiver of Indictment.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The Court was without jurisdiction to enter the judgment of conviction because there was no valid waiver of movant's indictment, because:

(1) Movant did not sign the waiver of indictment form in open court and prior to pleading guilty as required by Fed.R.Crim.P. 7(b); and

(2) Because movant was misled as to the nature of the charge 924(c) prior to waiving his right to be prosecuted by a grand jury indictment, by his counsel, the government and the court.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒

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(2) If you did not raise this issue in your direct appeal, explain why:

Movant's Counsel Failed To Raise this issue in His direct appeal.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application? N/A

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application? N/A

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal? N/A

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

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GROUND THREE:

Involuntary And Not Knowing Guilty Plea In Violation
OF Fed. R. Crim. P. 11.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Movant's guilty plea was not knowing and voluntary because He was misled as to the nature of the offense 924(C) by His Counsel, the government and the Court, all in violation of Fed. R. Crim. P. 11.

Had movant be aware of the true nature of the offense 924(C) He was charged for, He would not Have entered the guilty plea on the 924(C) offense.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Movant's Counsel Failed to Raise this issue in His direct appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☐

N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐

N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐

N/A

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(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: Conviction and Sentence obtained in violation of Movant's 6th Amendment Right To Effective Assistance of Counsel.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Movant's conviction and sentence were obtained in violation of his 6th Amendment right to effective assistance of counsel, because: (1) Movant's counsel coerced him to plead guilty to a crime he did not commit, namely, 924(c); (2) Movant's counsel coerced him to waive his right to a grand jury indictment; (3) Movant's counsel misled him as to the nature of the offense 18 USC 924(c); (4) Movant's counsel failed to challenge his juvenile enhancements and others enhancements the court used; (5) Because his counsel failed to advise the court that Movant has a mental disability.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Movant's Counsel Failed To Raise This issue in his direct appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

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Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/ADocket or case number (if you know): N/ADate of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A(3) Did you receive a hearing on your motion, petition, or application? N/AYes ☐ No ☐(4) Did you appeal from the denial of your motion, petition, or application? N/AYes ☐ No ☐(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal? N/AYes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/ADocket or case number (if you know): N/ADate of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

All Grounds raised Herein Have not been presented in any Federal court. Movant's Counsels Failed to raise these grounds; Movant Has mental disability and Has no Knowledge of the Federal Procedures; Movant became aware of the grounds raised Herein, recently, with the Help of fellows inmates that are Helping Him with His Legal Filings in His Federal Case.

Attachment No. 1

Ground Five: The Court improperly enhanced Movant's guidelines and sentence

(a) Supporting Facts: The Court improperly enhanced movant's guidelines and sentence based on juvenile convictions and others non-conviction crimes he was charged with, that do not qualify to enhance his guidelines nor his sentence.

(b) Direct Appeal of Ground Five:

(1) If you appeal from the judgment of conviction, did you raise this issue? Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Movant's counsel failed to raise this issue in his direct appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any- post-conviction motion, petition, or application?

Yes ☐ No ☒

Continue on attachment No. 2.

Attachment No. 2

Ground Six: Guilty Plea Entered in Violation of Fed.R.Crim.P. 11 Colloquy.

(a) Supporting Facts: Movant's guilty plea was entered in violation of Fed.R.Crim.P. 11 colloquy because the Honorable Judge committed many errors during the colloquy that confused movant as to which crimes he was pleading guilty to. Specifically, during the colloquy the Judge calculated his projected base offense level and concluded it will be 35 points based on crimes he did not plea guilty to, such as: attempted murder, attempted arson, obstruction of justice, etc.

(b) Direct Appeal of Ground Six:

(1) If you appeal from the judgment of conviction, did you raise this issue? Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Movant's counsel failed to raise this issue in his direct appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? Yes ☐ No ☒

Continue on attachment No. 3

Attachment No. 3

Ground Seven: 6th Amendment Right Violation (Ineffective Assistance of Counsel).

(a) Supporting Facts: Movant's trial and direct appeal's counsels provided him ineffective assistance of counsel in violation of his 6th Amendment Right, by failing to raise grounds 1, 2, 3, 4, 5, 6, above-stated, at the district court and in his direct appeal that should have changed the outcome of the proceedings in a better outcome for him. Counsels' ineffective assistance prejudiced movant, greatly.

(b) Direct Appeal of Ground Seven:

(1) If you appeal from the judgment of conviction, did you raise this issue? Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Movant's counsels failed to raise this issue in his direct appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing: Shari Heather Silver, Office of the Federal Public Defender, 100 S. Charles St. 9th Floor, Baltimore, MD 21201.

(b) At the arraignment and plea: Shari Heather Silver, Office of the FPD, 100 S. Charles St. 9th Floor, Baltimore, MD 21201.

(c) At the trial:

N/A

(d) At sentencing: Shari Heather Silver - Brendan A. Hurson, Office of the Federal Public Defender, 100 S. Charles St. 9th Floor, Baltimore, MD 21201.

(e) On appeal: Mary E. Davis, Davis and Davis, Washington, D.C.

(f) In any post-conviction proceeding:

N/A

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐ N/A

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18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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Therefore, movant asks that the Court grant the following relief: Order an evidenciary Hearing; Vacate His Conviction and Sentence; Dismiss the 924(C) Charge; Allow Him to plea a new in count one and Sentence Him to Time Served and order His realese from custody.
or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 8-19-19
(month, date, year)

Executed (signed) on 8-19-19 (date)

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.